

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

VENTURA CONTENT, LTD.,

Plaintiff,

v.

UGC INTERNET VENTURES, LTD.,  
SOBONITO INVESTMENTS, LTD., and  
DOES 1-9,

Defendants.

CIVIL ACTION  
FILE NO.1:12-CV-02856-TCB

**DECLARATION OF ALLISON VIVAS IN SUPPORT OF  
PLAINTIFF'S OPPOSITIONS TO DEFENDANTS'  
MOTION TO DISMISS**

I, Allison Vivas , declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the President of Tekco Management Group, LLC ("Tekco"), a Nevada Corporation with a principal place of business in Tucson and I am a Manager of Automatic Payment Processing LLC, ("APP") a Nevada Corporation with a principal place of business in Tucson, Arizona. I am also an authorized agent for Ventura Content, Ltd. ("Ventura").

2. I submit this declaration in support of Ventura's opposition to the Motion to Dismiss for *Forum Non Conveniens* filed by Defendants in the above referenced case ("Action"). The statements herein are based on my personal knowledge.

Location of Witnesses and Documents in the U.S.

3. Ventura is the registered owner of numerous United States copyrights in adult-oriented video content including the all works at issue in this case (hereinafter "Copyrighted Materials"). Unlike the Defendants in this case and other pirate "Tube Site" operators, Ventura invests substantial resources to acquire legal rights to the Copyrighted Materials and licenses those rights to other entities for commercial exploitation.

4. As I have explained in an earlier declaration I filed in 2008 in an unrelated case against Ventura's predecessor<sup>1</sup> filed in Florida, Ventura is a holding company that owns and hold the rights to content, including the Copyrighted Materials. Ventura does not maintain offices in the US. Instead, Ventura manages its business operations in the United States exclusively through the management companies Tekco and APP.

5. Both Tekco and APP are incorporated in Nevada, they are registered to do business in Arizona. Over the past year, Tekco and APP have employed over

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<sup>1</sup> Ventura redomiciled from Aruba to Anguilla last year. This redomiciliation had no effect on Ventura's operations as described in this declaration.

fifty-five employees in the United States in connection with the business operations described below. Ventura's revenues attributable to the Copyrighted Materials are taxed in the United States.

6. Tekco manages all of the websites through which the Copyrighted Materials are distributed to end users, and they are responsible for the marketing, promotion and sales of the Copyrighted Materials to consumers. In addition, all of the websites hosting the physical copies of the Copyrighted Materials are located in the United States.

7. Tekco is also responsible for the registration and enforcement of Ventura's Copyrighted Materials. As a result, documents reflecting Ventura's ownership of the Copyrighted Materials as well as correspondence with the United States Copyright Office are all located at Tekco's offices. In addition, the evidence of the infringement of the Copyrighted Materials by the Defendants is located at Tekco's offices.

8. Tekco also undertakes extensive steps to comply with federal laws concerning the dissemination of the Copyrighted Materials in the United States. For example, in accordance with 18 U.S.C. § 2257, Tekco verifies the name and age of the performers appearing in its videos in order to ensure that these performers are not minors, maintains records confirming this information, and further labels its video content with information regarding the physical location of

these records. All of these records are maintained at Tekco's offices in the United States.

9. Tekco employees regularly attend industry trade shows in the United States, they place advertisements for the Copyrighted Materials on websites targeting U.S. consumers and they are active members of the Free Speech Coalition, a trade organization for the adult entertainment industry based in Los Angeles, California.

10. APP manages and maintains all of the financial records relating to the commercial exploitation of the Copyrighted Materials on behalf of Ventura. As a result, all of the documents relating to Ventura's sales and profits from the Copyrighted Materials are located in the United States.

11. In sum, all of the relevant business operations concerning the Copyrighted Materials are conducted in the United States. All of the knowledgeable witness concerning the subject matter of this Action reside in the United States, they are citizens of the United States and they speak English. Virtually all of the documents relevant to this Action are located at Tekco and APP's offices and are all written in English. Ventura has no employees, officers or documents located in Anguilla or elsewhere that relate to Ventura's claim that Defendants have violated Ventura's Copyrighted Material on the Accused Sites.

12. Neither Ventura, Tekco nor APP have offices or relevant witnesses located in Cyprus. In addition, none of the relevant witnesses for Ventura can speak or read Turkish or Greek.

13. Given the nature of Ventura's business operations, the administrative cost and burden for Ventura to adjudicate this Action in Cyprus would be enormous. Among other things, Ventura would need to retain new Cyprian counsel to work with existing U.S. counsel, it would need to incur the costs to translate all of the pleadings, documents, and exhibits into Greek or Turkish and it would need pay to all the travel expenses to send its witnesses and lawyers from the United States to Cyprus for any hearings or trial in this action.

#### Ventura's Enforcement of its U.S. Copyrights

14. Ventura as well as the entire U.S. adult entertainment industry has been devastated by the impact of pirate "Tube Sites" such as those operated by the Defendants. The business model for these sites is simple: give users free "on demand" access to a large library of copyrighted works that otherwise would require payment to the copyright owner. The site operators typically incur no costs to produce these works or to prevent massive infringement by their users. Instead, these site operators give away popular copyrighted works for free then monetize their user traffic through advertising and cross-selling other goods and services through related companies.

15. Ventura has taken a leading role in the U.S. adult entertainment industry in attempting to prevent the unlawful exploitation of digital content by Tube Sites such as those operated by the Defendants in this Action. For example, Ventura has organized “Content Protection Retreats” in the U.S. for adult business to discuss anti-piracy issues including the proliferation of unlawful Tube Sites, such as those operated by Defendants in this Action.

16. Ventura also has worked extensively with the Free Speech Coalition to develop readily available filtering mechanisms for Tube Sites operators to prevent the ongoing infringement of copyrighted works. As a result of these efforts, a number of the largest Tube Sites now implement responsible and readily available technical measures to prevent users from uploading copyrighted materials to their websites. For information on this initiative, *see* <http://fscapap.com/>.

17. Ventura (like other copyright owners in the movie and music industries) has instituted a number of high profile cases in United States federal courts against Tube Site operators such as Defendants. Ventura engages in these enforcement activities in the United States because this country is by far the largest market for Ventura’s Copyrighted Materials with more than 65% of the subscription-based sales of the Copyrighted Materials originating from the sales to United States customers. More broadly, the US is widely known as the epicenter

of the adult entertainment industry and this country is where most adult content is created, marketed and distributed to consumers.

18. Unlike other copyright owners, Ventura has never filed an action in the United States against an end-user engaged in the infringement of its copyrighted works and instead has focused its enforcement efforts on companies such as Defendants whose entire business is designed to encourage and profit from their users massive infringement.

#### Defendants' Tube Sites Target U.S. Users

19. The Tube Sites operated by Defendants target a U.S. user base. All of the content, descriptions and instructions on the Defendants' sites are in English. In addition, the "terms of service" on the sites are written in English and provide U.S. users with specific information regarding the age of consent for adults residing in states such as Alabama, Mississippi, Wyoming, and Nebraska. Defendants' terms of service further require users to represent that they have not notified the "U.S. postal service" that they do not wish to receive sexually oriented material. No country other than the United States is referenced in the terms of service. A true and correct copy of the Terms of Service printed from Defendants' Tube Sites (with adult images redacted) is attached hereto as Exhibit A.

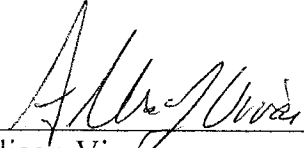
20. In addition, Defendants' sites provide links to the U.S. Copyright Office as well as so-called 18 U.S.C. 2257 Record-Keeping Requirements

Compliance Statement which the sites describe as being “required by the laws of the United States of America.” True and correct copies of these web pages printed from Defendants’ Tube Sites (with adult images redacted) are annexed hereto as Exhibit B.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge, information and belief.

Tucson, Arizona  
Dated: February 4, 2013

By: \_\_\_\_\_

  
Allison Vivas